

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULES I through XIII; the	)	AMENDMENT AND TRANSFER,
amendment and transfer of ARM	)	REPEAL, AND TRANSFER
2.43.203 through 2.43.205, 2.43.301	)	
through 2.43.303, 2.43.308 through	)	
2.43.310, 2.43.402 through 2.43.408,	)	
2.43.410, 2.43.418, 2.43.420 through	)	
2.43.424, 2.43.426, 2.43.432,	)	
2.43.433, 2.43.437, 2.43.440,	)	
2.43.451, 2.43.452, 2.43.502 through	)	
2.43.506, 2.43.508 through 2.43.511,	)	
2.43.514, 2.43.515, 2.43.603,	)	
2.43.604, 2.43.607, 2.43.611,	)	
2.43.617, 2.43.801 through 2.43.804,	)	
2.43.905, 2.43.914, 2.43.1002	)	
through 2.43.1004, 2.43.1010 through	)	
2.43.1012, 2.43.1015, 2.43.1017,	)	
2.43.1020, 2.43.1031, 2.43.1032,	)	
2.43.1045, 2.43.1046, 2.43.1101,	)	
2.43.1104, 2.43.1111, 2.43.1112,	)	
2.43.1210 through 2.43.1212,	)	
2.43.1701, 2.43.1703, 2.43.1704,	)	
2.43.1802, 2.43.1803, and 2.43.1810	)	
through 2.43.1812; the repeal of ARM	)	
2.43.409, 2.43.425, 2.43.428 through	)	
2.43.430, 2.43.520, 2.43.605,	)	
2.43.606, 2.43.609, 2.43.610, and	)	
2.43.1030; and the transfer of ARM	)	
2.43.201, 2.43.202, 2.43.304,	)	
2.43.512, 2.43.513, 2.43.901,	)	
2.43.902, 2.43.909 through 2.43.911,	)	
2.43.1001, 2.43.1005, 2.43.1023	)	
through 2.43.1025, 2.43.1040,	)	
2.43.1105, 2.43.1108, 2.43.1110,	)	
2.43.1113, 2.43.1115, 2.43.1118,	)	
2.43.1119, 2.43.1702, 2.43.1705, and	)	
2.43.1801, all pertaining to the	)	
operation of the retirement systems	)	
and plans administered by the	)	
Montana Public Employees'	)	
Retirement Board	)	

TO: All Concerned Persons

1. On September 11, 2008, the Public Employees' Retirement Board published MAR Notice No. 2-43-403 pertaining to the public hearing on the proposed adoption, amendment and transfer, repeal, and transfer of the above-stated rules at page 1852 of the 2008 Montana Administrative Register, Issue Number 17.

2. The board has adopted, amended and transferred, repealed, and transferred the following rules as proposed:

ADOPT:

NEW RULE II 2.43.2116  
NEW RULE III 2.43.2110  
NEW RULE IV 2.43.3402  
NEW RULE V 2.43.2301  
NEW RULE VI 2.43.2304  
NEW RULE VII 2.43.2311  
NEW RULE VIII 2.43.2324  
NEW RULE X 2.43.4803  
NEW RULE XI 2.43.4003  
NEW RULE XII 2.43.5008  
NEW RULE XIII 2.43.5109

AMEND AND TRANSFER:

<u>OLD</u>	<u>NEW</u>
2.43.203	2.43.1501
2.43.204	2.43.1502
2.43.205	2.43.1503
2.43.301	2.43.1301
2.43.302	2.43.1302
2.43.303	2.43.1405
2.43.308	2.43.1406
2.43.309	2.43.1407
2.43.310	2.43.1408
2.43.402	2.43.2104
2.43.403	2.43.2102
2.43.404	2.43.2114
2.43.405	2.43.2101
2.43.406	2.43.2105
2.43.407	2.43.2106
2.43.408	2.43.2109
2.43.410	2.43.2302
2.43.418	2.43.3401
2.43.420	2.43.2317
2.43.421	2.43.2315
2.43.422	2.43.2308
2.43.423	2.43.2303
2.43.424	2.43.2323
2.43.426	2.43.4807

2.43.432	2.43.2318
2.43.433	2.43.2310
2.43.437	2.43.2316
2.43.440	2.43.2309
2.43.451	2.43.2319
2.43.452	2.43.2609
2.43.502	2.43.2602
2.43.503	2.43.2601
2.43.504	2.43.2603
2.43.505	2.43.3403
2.43.506	2.43.2608
2.43.508	2.43.2701
2.43.509	2.43.2702
2.43.510	2.43.2703
2.43.511	2.43.2704
2.43.514	2.43.2707
2.43.515	2.43.2711
2.43.603	2.43.2901
2.43.604	2.43.2902
2.43.607	2.43.2903
2.43.611	2.43.4603
2.43.617	2.43.2607
2.43.801	2.43.5001
2.43.802	2.43.5002
2.43.803	2.43.5006
2.43.804	2.43.5007
2.43.905	2.43.2205
2.43.914	2.43.2214
2.43.1002	2.43.3502
2.43.1003	2.43.3503
2.43.1004	2.43.3504
2.43.1010	2.43.3510
2.43.1011	2.43.3511
2.43.1012	2.43.3512
2.43.1015	2.43.3515
2.43.1017	2.43.3517
2.43.1020	2.43.3520
2.43.1031	2.43.3531
2.43.1032	2.43.3532
2.43.1045	2.43.3545
2.43.1046	2.43.3546
2.43.1101	2.43.4606
2.43.1104	2.43.4609
2.43.1111	2.43.4616
2.43.1112	2.43.4617
2.43.1210	2.43.4203
2.43.1211	2.43.4204

2.43.1212	2.43.4207
2.43.1701	2.43.3001
2.43.1703	2.43.3005
2.43.1704	2.43.3008
2.43.1802	2.43.5102
2.43.1803	2.43.5103
2.43.1810	2.43.5110
2.43.1811	2.43.5111
2.43.1812	2.43.5112

REPEAL:

2.43.409  
2.43.425  
2.43.428  
2.43.429  
2.43.430  
2.43.520  
2.43.605  
2.43.606  
2.43.609  
2.43.610  
2.43.1030

TRANSFER:

<u>OLD</u>	<u>NEW</u>
2.43.201	2.43.1401
2.43.202	2.43.1402
2.43.304	2.43.1306
2.43.512	2.43.2705
2.43.513	2.43.2706
2.43.901	2.43.2201
2.43.902	2.43.2202
2.43.909	2.43.2209
2.43.910	2.43.2210
2.43.911	2.43.2211
2.43.1001	2.43.3501
2.43.1005	2.43.3505
2.43.1023	2.43.3523
2.43.1024	2.43.3524
2.43.1025	2.43.3525
2.43.1040	2.43.3540
2.43.1105	2.43.4610
2.43.1108	2.43.4613
2.43.1110	2.43.4615
2.43.1113	2.43.4618
2.43.1115	2.43.4620
2.43.1118	2.43.4623

2.43.1119	2.43.4624
2.43.1702	2.43.3004
2.43.1705	2.43.3009
2.43.1801	2.43.5101

3. The board has adopted the following rules as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I [2.43.2115] CORRECTION OF DEFINED BENEFIT  
RETIREMENT SYSTEM REPORTING ERRORS

(1) through (5) remain as proposed.

(6) The employer must correct its payroll records and pay the refund to the DCRP participant.

NEW RULE IX [2.43.2610] DESIGNATION OF BENEFICIARY BY  
MEMBERS, RETIREES, ALTERNATE PAYEES, AND CONTINGENT  
ANNUITANTS

(1) and (2) remain as proposed.

4. The board thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: An individual acting on behalf of the State Administration and Veterans' Affairs Interim Committee commented that while the proposal is very well written, some of the statements of reasonable necessity contain explanations of what the proposed rule does and also fail to explain the reason for the "particular approach" taken in the rule as required by section 2-4-305(6)(b), MCA.

RESPONSE 1: Although a statement that merely explains what a rule provides is not an adequate statement of reasonable necessity, nothing in statute or rule prohibits incorporating explanations of what a proposed rule amendment does to further the understanding of why the rule or amendments to the rule are necessary. Comment 2 provides an example of where an explanation of the proposed amendment may have been helpful.

The board has thoroughly reviewed the statements of reasonable necessity. The board is satisfied those statements provide adequate statements of reasonable necessity and explain the board's particular approach when adopting mandated rules. The board further believes that, when taken as a whole, the statements of reasonable necessity demonstrate the reason for the approach taken by the board in amending its rules. Specifically, paragraph 6 of the proposed notice advises the reader that the board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the statutes administered by and the service provided by the board. MPERA employees, covered employers, and retirement system members will be better able to locate rules applicable to their needs and situation.

Additionally, the board supplemented the statements of reasonable necessity in the information prepared to be read and made available at the hearing on the proposal.

COMMENT 2: The same individual, again acting on behalf of the Interim Committee, commented that there appears to be no statement of reasonable necessity addressing the proposed new final sentence to ARM 2.43.801(1).

RESPONSE 2: The statement of reasonable necessity for ARM 2.43.801(1) does not contain an explanation of what the proposed amendment does. Perhaps it should have. Section (1) limits Volunteer Fire Company Act (VFCA) membership to volunteer firefighters active in a "qualifying volunteer fire company". The board believes that term requires further explanation, so proposed the final sentence to direct the reader to 19-17-402, MCA when determining whether a volunteer fire company is qualified to participate in the VFCA. This reason for the language is adequately addressed in the last sentence of the statement of reasonable necessity: "The term 'qualifying volunteer fire company' is vague and requires further explanation."

COMMENT 3: The final comment received on behalf of the Interim Committee addresses the use of section 19-3-304, MCA, as authority for several rules being repealed even though that section was repealed in 1993.

RESPONSE 3: The board contacted the Secretary of State's Office both before publication of the Notice of Proposal and after receipt of this comment. On both occasions, the board was instructed to retain repealed rules when citing the authority and the implementing authorities of a repealed rule.

COMMENT 4: New Rules I and II address correction of reporting errors for defined benefit plans and the defined contribution plan respectively. Both rules provide that excess employee contributions will be returned to the employer. Rule II also states that the employer is responsible for correcting its payroll records and paying the refund to the DCRP participant. Rule I is silent regarding this responsibility. It should be addressed in Rule I as well as in Rule II.

RESPONSE 4: The board agrees. New Rule I is amended accordingly.

COMMENT 5: New Rule IX does not address the designation of beneficiaries by members. Therefore, the word "member" should be removed from the catchphrase.

RESPONSE 5: The board agrees and amends the catchphrase accordingly.

5. An electronic copy of this Adoption Notice is available through the Montana Public Employee Retirement Administration web site at <http://mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises

all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Montana Public Employee Retirement Administration works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

6. These rule actions are effective December 1, 2008.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

/s/ John Paull  
John Paull  
President  
Public Employees' Retirement Board

/s/ Michael P. Manion  
Michael P. Manion, Chief Legal Counsel  
and Rule Reviewer

Certified to the Secretary of State November 17, 2008.